

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED]

TL-N-839-00

date: February 11, 2000

to: [REDACTED]

from: [REDACTED]

subject: LO: [REDACTED] COLI-[REDACTED]
Cycle: [REDACTED]
Taxpayer: [REDACTED]
[REDACTED] Cycle, Summons Language on COLI

Non-Docketed Large Case Opinion¹

This is to respond to your request for an opinion dated February 11, 2,000. We have reviewed the memorandum that you provided to us from [REDACTED] Special Trial Attorney, to [REDACTED] COLI Specialist, dated November 12, 1999, regarding the question of requesting COLI data from tax years subsequent to the current audit cycle. We agree with its conclusion that it is appropriate to seek subsequent years' COLI information because it can provide important evidence concerning the economic substance of the COLI transactions.

Consistent, with the above, we, in district counsel, [REDACTED] are of the opinion that such subsequent cycle information should be considered "relevant" for purposes of issuing a summons and enforcing said summons. Further, we are of the opinion that the taxpayer's refusal to provide that information based on the fact that it pertains to a subsequent cycle is not a legitimate excuse in this particular COLI context. Accordingly, we agree with your issuance of the summons.

¹This opinion is that of District Counsel, [REDACTED] District. It is based on well-established legal principles, so it has not been pre-reviewed in the National Office. In the ordinary course of business, a copy of the opinion is sent to the national office for coordination purposes. This can result in post-review and subsequent modifications, clarifications, or suggestions. If any are made, you will be informed. This will be done by supplementary memorandum, where appropriate.

Finally, the relevance of the information can be fully argued at the summons enforcement proceeding. Therefore, one does not normally provide an explanation of the relevance of the information in the summons itself, but, in this particular case we are suggesting an exception. Given that no current cycle information, per se, is being summoned, we feel that it may be helpful if the summons, on its face, shows the Court that the subsequent year information being demanded is "relevant" information. Therefore, in this particular case, we have placed a non-limiting showing of relevance, as part of the suggested summons language.

The following is our suggested summons language. The first paragraph is a preamble, followed by the itemized demands for information.

"In addition to any other reasons why the information being summoned for years after [REDACTED] as itemized below, is relevant to the determination of the taxpayer's federal income tax liability for the current Examination years, [REDACTED] and [REDACTED] the information is relevant because it may provide important evidence concerning the deductibility of interest expense relative to loans from Corporate Owned Life Insurance (hereinafter "COLI") plans. For example, subsequent years' COLI information is relevant to the issue of the economic substance of the COLI transactions because to understand these transactions one needs to examine them historically, from their inception, through the examination years, into their projected future."

1. Provide documents, computations, memoranda, correspondence, and testimony to explain the same, to establish the elections and changes that [REDACTED] and its affiliated companies have made in their COLI plans for their tax years [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
2. Provide documents, computations, memoranda, correspondence, and testimony to explain the same, to establish the elections and changes that [REDACTED] and its affiliated companies have made in their COLI plans for their tax years [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as a result of any amendments to I.R.C. §264.
3. Provide all documents, data computations, memoranda, correspondence, and testimony to explain the same, received from [REDACTED] that pertains to [REDACTED] for [REDACTED] through [REDACTED]. This demand includes, but is not limited to promotion material, memorandum of understanding, side letters and correspondence explaining such policy

features as dividends or mortality experience, etc.

4. Provide the following COLI related billings, and any supplemental documents pertaining thereto, and testimony to explain the same:
 - a. Summary of COLI related amounts due for [REDACTED] and [REDACTED].
 - b. COLI related Minimum payment statements for [REDACTED] and [REDACTED].
 - c. COLI related Statements of dividends and surrenders for [REDACTED], [REDACTED] and [REDACTED].
 - d. COLI related sources of dividends for [REDACTED], [REDACTED] and [REDACTED].
5. Any Periodic reports for [REDACTED] through [REDACTED] that contain or should contain COLI related dividend and interest rate information, or similar data.
6. COLI related Complete performance reviews as of [REDACTED].
7. COLI related anniversary illustrations for [REDACTED] through [REDACTED].
8. All COLI related correspondence documents between the carrier, [REDACTED] and [REDACTED] or any of its affiliated companies, during the period [REDACTED] through [REDACTED].
9. All COLI related correspondence compilations, correspondence, and any other written documents between [REDACTED] or any of its affiliated companies, and any brokers who made presentations, representations, or offers, related to COLI to [REDACTED] or any of its affiliated companies, between [REDACTED] and the end of [REDACTED], or with respect to said period.
10. All internal memoranda or documents relating to the [REDACTED] COLI product, for the period beginning [REDACTED] and the end of [REDACTED], or with respect to said period.
11. All COLI related correspondence and documents received by [REDACTED] or its affiliated companies from its

broker, [REDACTED]

12. All COLI related payment schedules and statements of dividends and surrenders for [REDACTED] [REDACTED] and [REDACTED]
13. All periodic reports described in § 2, at page 6, or elsewhere of the COLI policies, for [REDACTED] [REDACTED] and [REDACTED]

"To the extent, if any, that there is a duplication in the documentation demanded in this summons, it need only be produced once. Producing complete copies, in lieu of originals, is acceptable, if original is made available for inspection." ✓

Conclusion

This concludes our legal opinion. If any modifications or suggestions are made by our national office, you will be informed. This will be done by supplementary memorandum or orally, as appropriate. If you have any questions, please contact the undersigned at (312) 886-9225.

[REDACTED]
District Counsel

By: [REDACTED]

Special Litigation Assistant

Attachments: Copy of your
request for opinion
and enclosures that
came with such request.

CC: [REDACTED]

page 5

(All distributions without enclosures, except as indicated).

CC: District Counsel, [REDACTED] District

CC: Assistant Regional Counsel (Large Case), MS ([REDACTED])

CC: Assistant Regional Counsel (TL), MS ([REDACTED])

CC:DOM:FS (with enclosures)

a: [REDACTED]-00COLI.wpd